SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 104.

HENRY DALLEMAGNE, CONSUL GENERAL OF THE REPUBLIC OF FRANCE, APPELLANT,

vs.

JEAN FRANCOIS MOISAN.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

REPLY BRIEF FOR APPELLANT.

WALTER V. R. BERRY,
BENJAMIN S. MINOR,

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There is practically no dispute concerning the facts of this case, the counsel for the appellee agreeing (Brief, p. 1) that "the statement of facts of appellant's opening brief is correct."

He asserts, however, that the record does not show Moisan to be an alien.

On page 2 of his brief he says: "The prisoner is not alleged not to have been a citizen of the United States."

On page 6 he adds: "The record does not show Moisan to have been an alien, and as far as the record shows he may

very well have been an American sailor employed at some American port, perhaps at San Francisco, for the return voyage to France."

And on page 15 he repeats: "The record shows that the proceeding failed to comply with the above statutes in the following respects: 1. It does not appear that Moisan is not a citizen of the United States."

This position is clearly the result of an oversight on the part of appellee's counsel. In his complaint for a writ of *habeas corpus*, duly signed and sworn to, the appellee declares:

"That he is Jean Francois Moisan, *a citizen of France*, more than 21 years of age" etc., etc. (Record, p. 1).

Turning to the law, we find that the appellee does not deny the power of the Federal Government to remove aliens at will, or to treat an alien as Moisan has been treated in this case. He neither denies the powers of its treaties to impose such restrictions and conditions upon aliens as it may deem wise, nor does he contend that the XIV amendment in any way invalidates article VIII of the treaty as applying to an alien sailor. He admits that within its sphere a treaty is paramount to the constitution and laws of a State (Brief, p. 6).

His contention is, however, that article VIII of this treaty cannot impose upon the authorities of the State of California the duty of arresting alien sailors or of assisting in their removal from that State, and he prays that this court may give its decision on these two constitutional questions raised by his brief.

The appellant, on behalf of the government he represents, does not feel that it is fitting or incumbent upon him to enter into an argument concerning the constitutionality of a treaty solemnly entered into with the United States. This treaty, drawn up on the part of the United States by the Hon. Edward Everett, was ratified by the Senate and proclaimed by President Franklin Pierce, through his Sec-

retary of State, the Hon. W. L. Marcy, over half a century ago. The provisions of article VIII, the constitutionality of which is now for the first time assailed, have been in constant operation for the arrest and the detention of sailors, both in France as well as in the United States, during all these years.

If article VIII is unconstitutional upon the grounds alleged by the appellee, a score of other treaties* (in force today between the United States and various foreign countries) containing articles practically similar to article VIII, must likewise be deemed unconstitutional.

If the appellee's contention be correct, provisions like those enacted in section 5280 of the Revised Statutes of the United States are necessarily unconstitutional also.

The case of Robertson *vs.* Baldwin, 165 U. S., 275, 277–280, which turns upon the powers (under a Federal statute) of justices of the peace to issue warrants to apprehend deserting seamen, and the cases of Wildenhus, 120 U. S., 1, 12–15, and Tucker *vs.* Alexandroff, 183 U. S., 424, 429, which discuss articles in various treaties similar to article VIII of the French treaty under consideration, have already been cited in appellant's opening brief.

In regard to the point made by the appellee, that by virtue of sections 4079, 4080, and 4081 of the Revised Statutes of the United States, the provisions of article VIII of this treaty can be carried into effect by consular application to *Federal authorities only*, the appellant has fully set out his position on page 11 of his opening brief. He repeats that it is wholly immaterial to him or to the government he represents whether the persons whose detention is requested by French consuls in the United States be arrested by the local police or through the Federal authorities. The appellant has, in this case, simply followed the custom which has been in operation both in the United States and in France for 50 years.

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*See Appendix.

The appellant desires once more to call the attention of this court to the fact that not one of the points relied upon by the appellee in his brief was touched upon or considered in the court below. That court ordered the discharge of the appellee on *one ground only*, namely, "that the bark *Jacques*, of the crew of which said Jean Francois Moisan was a member, has departed the port of San Francisco and is no longer in said port" (Record, p. 7).

It is the earnest desire and request of the appellant, on behalf of the government he represents, that the wording of this clause of article VIII of the treaty, to wit, "during the whole time of their stay in the port," be construed and interpreted by this court, in order that in the future all doubts upon this point, of such high importance not only to French consuls in the United States, but to American consuls in France, may be set at rest.

Respectfully submitted,

WALTER V. R. BERRY.
BENJAMIN S. MINOR.

APPENDIX.

"COMPILATION OF TREATIES IN FORCE" (1899).

(Prepared under Act of July 7, 1898.)

Austria,	May	8, 1848,	Article 4 (p. 14).
Austria,	July	11, 1870,	Article 11 (p. 21).
Belgium,	March	9, 1880,	Article 11 (p. 54).
Belgium,	March	9, 1880,	Article 12 (p. 54).
Brazil,	Dec.	12, 1828,	Article 31 (p. 85).
Colombia,	Dec.	12, 1848,	Article 33 (p. 134).
Colombia,	May	4, 1850,	Article 3 (p. 139).
Denmark,	July	11, 1861,	Article 2 (p. 160).
France,	June	24, 1822,	Article 6 (p. 180).
France,	Feb.	23, 1853,	Article 8 (p. 187).
France,	Feb.	23, 1853,	Article 9 (p. 187).
Germany,	Dec.	11, 1871,	Article 13 (p. 196).
Germany,	Dec.	11, 1871,	Article 14 (p. 196).
Greece,	Dec.	27, 1837,	Article 13 (p. 272).
Haiti,	Nov.	3, 1864,	Article 36 (p. 285).
Italy,	May	8, 1878,	Article 13 (p. 320).
Italy,	Feb.	24, 1881,	Article 1 (p. 323).
Japan,	July	29, 1858,	Article 9 (p. 331).
Netherlands,	May	23, 1878,	Article 11 (p. 447).
Netherlands,	May	23, 1878,	Article 12 (p. 448).
Peru,	Aug.	31, 1887,	Article 32 (p. 506).
Prussia,	May	1, 1828,	Article 11 (p. 518).
Roumania,	June	17, 1881,	Article 11 (p. 526).
Roumania,	June	17, 1881,	Article 12 (p. 526).
Russia,	Dec.	18, 1832,	Article 9 (p. 533).
Sweden,	July	4, 1827,	Article 14 (p. 615).